

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015044544001**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Barclays Capital, Inc., Respondent
Member Firm
(BD No. 19714)

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Barclays Capital, Inc. ("Barclays" or the "Firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Barclays hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Barclays has been a FINRA member since October 19, 1987, and has been registered with the Securities and Exchange Commission ("SEC") since June 13, 1989. Barclays is headquartered in New York City and has 23 branch offices. The Firm employs approximately 3,200 registered persons. The Firm conducts a general securities business. At all times relevant to this AWC, Barclays, among its activities, offered mutual funds to its retail brokerage customers. The activities that are the subject of this AWC occurred at Barclays Wealth and Investment Management, Americas, a business unit of Barclays.

RELEVANT DISCIPLINARY HISTORY

Barclays has no relevant disciplinary history.

OVERVIEW

During the period of January 1, 2010 through June 30, 2015 (the “Relevant Period”), Barclays had inadequate supervisory systems and written supervisory procedures for supervising the sale of mutual funds to retail brokerage customers. For at least five years, the Firm:

- failed to provide adequate supervisory guidance for ensuring the suitability of mutual fund transactions,
- incorrectly defined a mutual fund switch,
- failed to identify unsuitable mutual fund transactions, including, but not limited to switches,
- failed to notify customers of the costs associated with switches, and
- failed to have a centralized system in place to aggregate or household mutual fund purchases to ensure customers received available mutual fund breakpoint discounts.

As a consequence of the deficiencies, Barclays conducted look back reviews. For the Relevant Period, Barclays identified over 6,100 unsuitable mutual fund switches. For the period March through August 2014 (the “Six-Month Look Back Period”), Barclays identified over 340 unsuitable mutual fund transactions and 98 missed breakpoint discounts. These transactions resulted in substantial customer harm, including realized losses.

As a result of the foregoing conduct, Barclays violated NASD Rules 2310(a), 3010(a) and (b) and FINRA Rules 2010, 2111(a), 3110(a) and (b).¹

In resolving this matter, Barclays will pay over \$10 million in restitution relating to the Firm’s look back reviews and any additional restitution amounts as identified in connection with various undertakings described below.

FACTS AND VIOLATIVE CONDUCT

1. Barclays Failed to Ensure that Mutual Fund Sales were Suitable

Throughout the Relevant Period, Barclays failed to have a supervisory system reasonably designed to ensure that mutual fund transactions for its retail brokerage customers were suitable based upon customer investment objectives, risk tolerance and account holdings. The Firm’s procedures did not provide adequate guidance to supervisors regarding the steps to be taken to ensure that recommended mutual fund

¹ Effective July 9, 2012, NASD Rule 2310(a) was renumbered FINRA Rule 2111(a). Effective December 1, 2014, NASD Rule 3010 was renumbered FINRA Rule 3110.

transactions were consistent with the financial situation and needs of the customer. By reason of the foregoing conduct, Barclays violated NASD Rule 3010(a) and (b) and FINRA Rules 3110(a) and (b) and 2010.

For the Six-Month Look Back Period, Barclays identified 1,723 (or 39%) of the 4,409 mutual fund transactions by Barclays' brokerage customers to be unsuitable. The recommended transactions were unsuitable as they were inconsistent with the customer's stated risk tolerance, investment objectives or the customer's account holdings, or involved unsuitable short-term trading. Approximately 343 of these unsuitable transactions resulted in customer harm, including realized losses, totaling approximately \$818,551. By reason of the foregoing conduct, Barclays violated FINRA Rules 2111(a) and 2010.

2. Barclays Failed to Prevent Unsuitable Switches

NASD Notices to Member 94-16 and 95-80 remind broker-dealers of their obligation to ensure that any recommendation to switch mutual funds be evaluated with regard to the net investment advantage to the investor. "Switching among certain fund types may be difficult to justify if the financial gain or investment objective to be achieved by the switch is undermined by the transaction fees associated with the switch."²

Incorrect Mutual Fund Switch Definition

From at least January 2010 through March 2015, Barclays' written compliance policies and supervisory procedures, for its retail brokerage business, incorrectly defined a mutual fund switch to require three separate mutual fund transactions within a certain time frame. Barclays' written procedures required supervisors to review automated switch alerts and notify clients of potential increased charges associated with such activity, through disclosure letters.

Barclays' automated system correctly identified thousands of potential switches. Nevertheless, Barclays closed out those alerts and excluded transactions from consideration as switches based upon the Firm's incorrect switch definition. As a result, Barclays failed to review thousands of switches for suitability and failed to ensure that disclosure letters were sent to customers regarding the transaction costs.

Through June 2015, Barclays generated 8,008 switch alerts. However, the Firm only sent 155 disclosure letters, 91% of which did not disclose the costs associated with the switches. Furthermore, Barclays' written procedures failed to provide supervisors with adequate guidance on how to assess the suitability of a switch.

² NASD Notices to Members 94-16 (1994) and 95-80 (1995).

On or about November 4, 2014, when Barclays changed its clearing arrangement, commission information was not captured in the Firm's automated switch alerts, and Barclays failed to ensure that it adequately considered the true cost of switches, a factor in assessing suitability. This error went undetected by Barclays until April 2015, and was not corrected until at least June 2015.

In summary, Barclays failed to establish and maintain a reasonable supervisory system regarding mutual fund switching during the Relevant Period. By reason of the foregoing conduct, Barclays violated NASD Rule 3010(a) and (b) and FINRA Rules 3110(a) and (b) and 2010.

Unsuitable Switch Transactions

For the Relevant Period, Barclays identified over 6,100 unsuitable mutual fund switches. The recommended switches were unsuitable because the purchased funds were equivalent to the redeemed funds or an alternative fund with no fees was available, and resulted in customer harm in the amount of approximately \$8.63 million. By reason of the foregoing conduct, Barclays violated NASD Rule 2310(a) and FINRA Rules 2111(a) and 2010.

3. **Barclays Failed to Ensure that Certain Customers Received Available Breakpoint Discounts**

Many mutual funds that sell shares with front-end sales loads offer ways for investors to qualify for reduced sales charges. Front-end sales charges on Class A share purchases may be reduced through breakpoint discounts. These discounts are generally based on the total amount invested in a particular mutual fund family by a customer or related customer accounts. Generally, an investor can receive a breakpoint discount through either a single purchase large enough to reach a breakpoint, or through multiple purchases in a single mutual fund or any of the funds in a fund complex. An investor may aggregate current purchases with prior purchases in one or more accounts over time to meet an applicable breakpoint threshold through "rights of accumulation" ("ROA"). Many mutual funds also offer breakpoints through "letters of intent" ("LOI"), which are written statements of intent by investors to purchase a certain amount of mutual fund shares over a specified period, typically thirteen months.

A broker-dealer that sells mutual funds with front-end sales charges must ensure that purchases are properly aggregated or householded so that customers receive available breakpoint discounts.

Most of the mutual funds available on Barclays' retail platform offered such breakpoint discounts, which were disclosed in the prospectuses. However, during the Relevant Period, Barclays failed to have a supervisory system reasonably designed to ensure that mutual fund purchases were properly aggregated or householded so that customers were provided with available discounts.

By reason of the foregoing conduct, Barclays violated NASD Rule 3010(a) and (b) and FINRA Rules 3110(a) and (b) and 2010.

For the Six-Month Look Back Period, Barclays found that it failed to provide eligible customers applicable ROA discounts in connection with 98 Class A share mutual fund transactions, resulting in customer harm. Barclays had a duty to provide its customers with such discounts, and by failing to do so, violated FINRA Rule 2010.

OTHER FACTORS

In resolving this matter, FINRA has recognized Barclays' cooperation in having (1) initiated, prior to detection or intervention by a regulator, an investigation to identify the scope and extent of its supervisory failures regarding mutual fund switches; (2) retained an outside consultant to conduct mutual fund reviews that extend beyond the Staff's investigation, which will result in significant remediation to customers; (3) promptly established plans to identify customers harmed by unsuitable switches, other unsuitable mutual fund trades and missed breakpoint discounts for purposes of remediating customer harm; and (4) provided substantial assistance to FINRA in its investigation.

- B. Barclays also consents to the imposition of the following sanctions:
1. A censure;
 2. A fine of \$3,750,000;
 3. Within 30 days of the Notice of Acceptance of this AWC, Barclays will submit to FINRA a proposed methodology by which it will perform each undertaking set forth in paragraphs 4 and 5 below. If the proposed methodologies are consistent with the methodologies agreed upon by FINRA staff in connection with each of the Six-Month Look Back Period reviews previously conducted, and any proposed modifications to those methodologies as agreed upon by FINRA staff, FINRA will not object to the methodologies. The date that FINRA notifies the Firm that it does not object to the methodologies shall be called the "Notice Date." In the event FINRA objects to any methodology, the Firm will have an opportunity to address FINRA's objections and resubmit the methodology within 30 days.
 4. Barclays, within 180 days of the Notice Date, will pay restitution, including interest, of over \$10 million in accordance with the look back reviews and the findings of its outside consultant in connection with certain mutual fund transactions:
 - a. Restitution of approximately \$818,551, plus interest at the rate set

forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2) (“Restitution Interest”), to harmed customers in connection with approximately 343 unsuitable mutual fund brokerage transactions for the Six-Month Look Back Period;

- b. Restitution of approximately \$8,628,813, plus Restitution Interest, to harmed customers in connection with approximately 6,172 unsuitable mutual fund switches for the Relevant Period; and
 - c. Restitution amount to be determined, plus Restitution Interest, to harmed customers in connection with the 98 missed ROA breakpoint discounts for the Six-Month Look Back Period.
5. Barclays also consents to complete the following undertakings within 180 days of the Notice Date:
- a. Complete an undertaking to review for unsuitable mutual fund transactions in retail brokerage accounts for the periods (1) January 1, 2010 through February 29, 2014 and (2) September 1, 2014 through June 30, 2015, and pay restitution, plus Restitution Interest, to harmed customers, as identified by the outside consultant.
 - b. Complete an undertaking to review for missed LOI breakpoint discounts for all mutual fund transactions effected in any brokerage accounts during the Six-Month Look Back Period and pay restitution, plus Restitution Interest, to harmed customers, as identified by the outside consultant, and provide a written submission to FINRA staff detailing its findings.
 - c. Complete an undertaking to review for missed breakpoint discounts, including ROAs and LOIs, for all mutual fund transactions effected by registered representatives JB and DB during the respective periods of their employment, and pay restitution, plus Restitution Interest, to harmed customers, as identified by the outside consultant.
 - d. Complete an undertaking to review for missed ROA breakpoint discounts for all mutual fund transactions effected in any brokerage accounts during the period July 1, 2012 through December 31, 2012, and pay restitution, plus Restitution Interest, to any harmed customers, as identified by the outside consultant; and,
 - 1. Provide a written submission to FINRA staff detailing its findings, whether it plans to expand the ROA breakpoint

review, and its rationale.

2. If Barclays elects to expand the review, within 300 days of the Notice Date, Barclays shall complete an undertaking to review for missed ROA breakpoints for all mutual fund transactions effected in any brokerage accounts for the periods (1) January 1, 2010 through June 30, 2012, (2) January 1, 2013 through February 29, 2014, and (3) September 1, 2014 through June 30, 2015, and pay restitution, plus Restitution Interest, as identified by the outside consultant, and provide to FINRA staff satisfactory proof of restitution and/or of reasonable and documented efforts to make restitution, consistent with the requirements set forth in paragraph 6 below.
3. If Barclays advises that it does not plan to expand the ROA breakpoint review, and FINRA staff objects to that position, the Firm will have the opportunity to address FINRA's objections and concerns within 30 days. FINRA will discuss its objections and concerns with the Firm, after which it will provide Barclays with written notice of whether and to what extent a further review and undertaking is required. Within 120 days of FINRA's written notice that a further review is required, Barclays shall complete an undertaking and pay restitution, plus Restitution Interest, as identified by the outside consultant, in accordance with subparagraph d.2., above.
- e. Unless stated otherwise, Barclays shall exclude from the undertakings in paragraph 5.a. through 5.d., the Six-Month Look Back Period and the associated restitution, and Restitution Interest, paid pursuant to paragraph 4.a. and 4.c..
6. Within 210 days of the Notice Date, or such additional period agreed to in writing by FINRA staff, a registered principal and officer of the Firm, on behalf of the Firm, shall submit to the FINRA staff satisfactory proof of restitution payments pursuant to the undertakings described in paragraph 4.a. through 4.c. and 5 a. through 5d. above, including a list that includes customers who received the restitution, and where restitution has not been paid, proof of reasonable and documented efforts undertaken to effect restitution. However, in connection with any expanded review under paragraph 5.d.2 or 5.d.3 above, Barclays shall, within 330 days of the Notice Date, submit such satisfactory proof of restitution payments pursuant to the undertakings described in paragraph 5.d.2. or 5.d.3., and where restitution has not been paid, proof of reasonable and documented efforts undertaken to effect restitution. The list shall identify customer

names, account numbers, purchase and sale transaction dates, CUSIPs, purchase and sale principal amounts, restitution amounts, Restitution Interest amounts, and restitution payment dates. The list shall also state, for each area reviewed, the total amount of restitution paid to all customers, plus the total amount of Restitution Interest paid.

7. Restitution Interest shall be calculated from the purchase date of each unsuitable switch or other mutual fund transaction, or missed breakpoint discount, as applicable, until the date of payment of restitution.
8. Proof of restitution or of reasonable and documented efforts undertaken to effect restitution shall be submitted by letter to Gary A. Chodosh, FINRA – Department of Enforcement, Brookfield Place, 200 Liberty Street, New York, NY 10281, and by e-mail from a work-related account of the registered principal and officer of the Firm to EnforcementNotice@FINRA.org, in each instance identifying Barclays Capital Inc., Case No. 20150445440.
9. Upon written request by Barclays showing good cause, FINRA staff may extend any of the procedural dates set forth above.

If for any reason the Firm cannot locate any customer who is found to be eligible for restitution after reasonable and documented efforts within 330 days of the Notice Date, or such additional period agreed to by a FINRA staff member in writing, the Firm shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. The Firm shall provide satisfactory proof of such action to the FINRA staff member identified above and in the manner described above, within 30 days of forwarding the undistributed restitution and interest to the appropriate state authority.

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Barclays agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Barclays has submitted an Election of Payment form showing the method by which it propose to pay the fine imposed.

The Firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Barclays specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the Firm;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Barclays specifically and voluntarily waives any right to claim bias or prejudice of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Barclays further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Barclays understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and

C. If accepted:

1. this AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;
2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. The Firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The Firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Firm has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

December 18, 2015
Date (mm/dd/yyyy)

Barclays Capital, Inc., Respondent

By: 

Gerard S. LaRocca

[Print Name]

Chairman
Barclays Capital, Inc.

[Title]

Reviewed by:



Paul A. Merolla, Esq.
Murphy & McGonigle, P.C.
Counsel for Respondent
Barclays Capital, Inc.
1185 Avenue of the Americas
21st Floor
New York, NY 10036
(212) 880-3960

Accepted by FINRA:

December 29, 2015
Date

Signed on behalf of the
Director of ODA, by delegated authority



Gary A. Chodosh
Senior Regional Counsel
FINRA Department of Enforcement
Brookfield Place
200 Liberty Street
New York, NY 10281
Phone: 212-858-4771
Fax: 202-721-6564

ELECTION OF PAYMENT FORM

Respondent, Barclays Capital, Inc. intends to pay the fine set forth in the attached Letter of Acceptance, Waiver and Consent by the following method (check one):

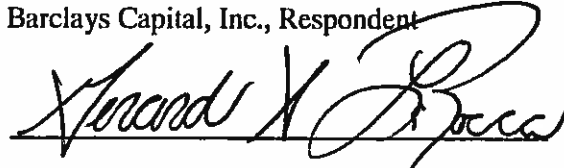
- A personal, business or bank check for the full amount;
- Wire transfer;
- Credit card authorization for the full amount;³ or
- The installment payment plan (only if approved by FINRA staff and the Office of Disciplinary Affairs).⁴

Respectfully submitted,

Barclays Capital, Inc., Respondent

DECEMBER 18, 2015
Date

By:



Gerard S. LaRocca
Chairman

[Print Name]

Barclays Capital, Inc.

[Title]

³ You may pay a fine of \$50,000.00 or less using a credit card. Only Mastercard, Visa and American Express are accepted for payment by credit card. If this option is chosen, the appropriate forms will be mailed to you, with an invoice, by FINRA's Finance Department. Do not include your credit card number on this form.

⁴ The installment payment plan is only available for fines of \$5,000 or more. Certain interest payments, minimum initial and monthly payments, and other requirements apply. You must discuss these terms with FINRA staff prior to requesting this method of payment.